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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 173

MOUND COMPANY,

Petitioner,

v.

THE TEXAS COMPANY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

LEON JAWORSKI
Bank of the Southwest Building
Houston 2, Texas
Attorney for Respondent

Of Counsel:
W. S. CLARKE
Texaco, Inc.
Houston 2, Texas
M. W. PARSE, JR.
Bank of the Southwest Building
Houston 2, Texas
FULBRIGHT, CROOKER, FREEMAN,
BATES & JAWORSKI
Bank of the Southwest Building
Houston 2, Texas

GORE PRINTING COMPANY OF TEXAS, HOUSTON, TEXAS

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Statement

As so clearly appears from the opinion of Chief Judge Tuttle, this case is governed by simple, well-established rules of law. Because the elemental nature of the questions controlling this case are somewhat obscured by petitioner's unilateral and partisan interpretations of the record, the following additional statement is respectfully submitted:

The initial lease of mineral rights to respondent executed in 1915 was amended in 1921 when sulphur was discovered. The effect of this amendment was to defer operations for oil upon the payment to petitioner of minimum advance sulphur royalties escalating to $15,000 per month by 1924. (Plf. Ex. 1-B, R. 466-75) These advance sulphur royalties and royalties from sulphur production, aggregating ap-

proximately $11,500,000, were paid to petitioner for over 30 years, and were retained by petitioner. (R. 409) The 1921 amendment, and, the resultant payment of these advance royalties, to petitioner's great benefit, relieved respondent from any obligation to drill for oil until 1986. This is admitted by petitioner (R. 409). By the execution of this 1921 amendment, there occurred the first separation between sulphur operations on the one hand and oil and gas operations on the other.

The following year (1922), respondent executed a sublease or assignment of the sulphur mineral rights to Freeport Sulphur Company and retained a royalty interest of 70% of the net profits. (Plf. Ex. 1-C, R. 476-504) This agreement further separated sulphur operations from oil and gas operations, and thereafter Freeport alone operated the lease for sulphur and drilled approximately 1,000 wells for sulphur. (R. 356) Freeport had no interest in oil or gas rights. (R. 367) Freeport occupies an entirely separate corporate status from respondent, with no interlocking directorate and is in no respect under the control of respondent, Freeport is in the sulphur business, respondent in the oil and gas business. (R. 362)

Although relieved of any obligation to drill for oil until 1986, respondent could voluntarily drill for oil before that time. If respondent elected to do so, then, by the terms of a lease amendment dated January 1, 1942 (Plf. Ex. 2, R. 515-525), respondent had the duty to continue drilling without cessation for more than 30 days between wells under pain of forfeiture of its oil and gas leasehold estate.[1]

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[1] Here again is still another division between mineral operations since under the 1942 agreement, the lease could be forfeited as to oil and gas by drilling for those minerals, and yet the sulphur rights would continue. The parties specifically provided *drilling for oil* alone would trigger respondent's continuous drilling obligation since it was contemplated that drilling for sulphur by Freeport would continue.

The complaint charged two grounds of forfeiture. The first one was predicated on the allegation that the lease amendment of January 1, 1942, provided that "at any time after drilling for oil has been started," the lessee was under the obligation to continue drilling for oil without cessation for more than thirty days between wells; that respondent had in fact drilled for oil but had failed to observe the continuous drilling requirement. Petitioner specifically set out in its complaint that its claim of forfeiture was based upon the following provision of the lease amendment of January 1, 1942:

> ". . . . At any time after *drilling for oil*[2] has been started, and before oil or gas is discovered in paying quantities on the Mound Company 3000 acres, should the lessee permit more than thirty days to elapse between the abandonment of one well and the commencement of operations, for the drilling of another well, the lessor may at its option, unless such delay beyond thirty days is caused by act of God or conditions wholly beyond the control of the lessee, terminate this lease as to oil and gas, as to the Mound Company 3000 acres." (R. 18-20)

Petitioner further charged in the alternative that there had been a discovery of oil in paying quantities on the lease as a result of drilling operations of the respondent and that there was a lapse of more than thirty days during which there was neither production of oil or gas from said tract nor actual drilling or reworking operations being conducted thereon. It was charged that this subjected the lease to forfeiture under Article III of the 1942 amendment. (Complaint, R. 20-22; Plf. Ex. 2, R. 515-525) Petitioner asserted that a finding in its favor on either contention would forfeit the lease.

[2] Emphasis supplied throughout unless otherwise indicated.

Petitioner's contention throughout the trial is tersely reflected in the following statement petitioner made to the trial court following the conclusion of the evidence:

> "This brief, then, is concerned principally with the facts of the case as established by the testimony, the admissions and the other evidence *since the judgment in the case will turn on the determination of the two ultimate fact issues of whether there was a prospecting and drilling for oil or a discovery of oil in paying quantities.*" (R. 415)

The only activities which petitioner claimed constituted drilling for oil are correctly stated in the majority opinion to have been (1) participation in the cost of a geophysical well and survey, and (2) the electrical logging and sidewall coring of nine wells drilled for sulphur by Freeport.[3]

Sulphur had been produced continuously for some 27 years when, in 1949, the known sulphur deposits were being rapidly depleted. (R. 356) While Freeport did not want to overlook any sulphur ore bodies, it did not want to drill edge wells on the periphery of the salt mass until a geophysical refraction survey had determined the shape of the salt dome. (R. 357) Accordingly, it conceived the idea of conducting a refraction survey from a hole drilled into the center of the salt mass. This hole or salt well is known as well 983. (R. 357)

After the location had been made and the drilling commenced, Freeport, in an effort to reduce its cost and knowing of respondent's interest in assembling geophysical information for possible future use, offered respondent an

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[3] Petitioner conceded in the trial court that the drilling of the geophysical well did not alone constitute drilling for oil. (R. 122) The well was located in the center of the salt dome where salt alone is found, and petitioner's president admitted respondent "had no right to expect anything other than salt." (R. 36) These concessions serve to limit the inquiry to the taking of the logs and cores in the sulphur wells drilled by Freeport.

opportunity to participate in the survey. (R. 357) This was done. The agreement between Freeport and respondent was reduced to writing (Plf. Ex. 13, R. 558-562) and for the Court's convenience is attached hereto as Appendix A. This agreement specifically provides that respondent was "desirous of obtaining all such information in connection with the possibility of conducting prospecting for oil and gas at Hoskins Mound".

The Freeport executive who was in charge of its operations testified that the results of the geophysical survey were used by Freeport to locate several edge wells which were drilled by Freeport in 1950 in an effort to find additional sulphur deposits. (R. 356, 359) The wells were drilled by Freeport to see if it could find more sulphur on the flanks. (R. 359) Respondent saw this drilling program as an opportunity to obtain geological information for possible future oil and gas operations and asked permission to electrically log and core the sulphur exploratory wells. (R. 372) Permission was granted by Freeport, and this agreement was also reduced to writing (Plf. Ex. 16, R. 562-564), a copy of which appears in this brief as Appendix B. This agreement refers to discussions between Freeport and respondent "looking toward an arrangement whereby The Texas Company might acquire information from electrically logging and sidewall coring certain sulphur exploratory wells which you (Freeport) contemplate drilling on the flanks of the Hoskins Mound dome . . ."

Respondent showed by the admissions of petitioner's own witnesses (including petitioner's President and Executive Vice President) that these activities were those which any prudent operator would take in assembling geological and geophysical data *prior to* drilling for oil. (R. 47-48, 213, 342-343) The testimony of Freeport officials in charge of the drilling of the wells in question was uniform and

unequivocal that these wells were located and drilled by it for sulphur (R. 84, 88, 89, 356, 359), were drilled solely at its expense (R. 361) and were actually used in the sulphur operation. (R. 361)

The case was tried to the court and both of the "ultimate issues of fact" petitioner represented to the court existed in the case were determined by the court adversely to petitioner.

The trial court found as a fact that these wells were not drilled for oil in whole or in part and were drilled by Freeport for the sole purpose of attempting to discover additional sulphur deposits. The trial court further found that respondent's activities were not a drilling for oil and gas, but related only to assembling geological and geophysical information. (R. 433-35)

Faced with (a) adverse findings to each of the issues of fact petitioner submitted to the trial court, and (b) the clearly erroneous provision of Rule 52(a), Federal Rules of Civil Procedure, petitioner argued on appeal that (1) drilling for oil had been established as a matter of law, (2) discovery of oil in paying quantities had been established as a matter of law and accordingly it was entitled to judgment. In so contending petitioner urged the same strained construction of the lease amendment of January 1, 1942, contended for herein.

The Court of Appeals, after a consideration of the petitioner's contentions on original submission and in two petitions for rehearing, concluded by majority opinion on each occasion that the evidence sustained the findings of fact and judgment of the trial court and that the lease amendment could not be given the construction contended for by petitioner. The Court of Appeals accordingly affirmed and held that the judgment of the trial court was "amply supported in fact and law."

Questions Presented

Respondent cannot agree that the questions presented in this case are as stated by petitioner. The questions as stated ignore the basic provisions of the lease amendment of January 1, 1942 and the facts found by the trial court, based largely on undisputed evidence.

Petitioner's first question ignores the basic lease provision under which *drilling for oil*, and that act alone, triggers respondent's continuous drilling obligation. It ignores the undisputed evidence that Freeport Sulphur Company alone located the wells and drilled them and that they were located and drilled for sulphur and were actually used in Freeport's sulphur operations. The trial court accordingly found that the wells were not drilled, in whole or in part, for the purpose of drilling for oil, and that respondent merely utilized the sulphur holes for the purpose of assembling geological data.

Petitioner's second question ignores the admissions of its own witnesses that the use of electric logs and side wall cores is a standard method of assembling geological data prior to drilling for oil. It ignores the undisputed evidence that respondent did not participate in the locating or drilling of the wells; that respondent did not procure the drilling of the wells; that the wells would have been drilled by Freeport for sulphur whether or not respondent took logs and cores; and that Freeport alone paid the cost of drilling the wells.

Both questions further ignore the undisputed fact that sulphur operations had been contractually separated from operations for oil.

Argument

I.

NO GROUNDS FOR REVIEW ARE SHOWN BY PETITIONER

There does not exist a single "special" or "important" reason for the granting of this writ, and petitioner has wholly failed to bring its petition within the requirements of Rule 19 of this Honorable Court.

This case is controlled solely by principles of local law. No federal question is involved. The questions involved are neither of general nor public importance. The decision is not in conflict with the decision of another Court of Appeals; nor is it in conflict with applicable state law on "important state or territorial questions."

Only "real and embarrassing conflicts of opinion and authority" justify intervention by writs of certiorari. *N.L.R.B.* v. *Pittsburg S.S. Co.*, 340 U.S. 498, 95 L.Ed 479; *Rice* v. *Sioux City Cemetery*, 349 U.S. 70, 99 L.Ed. 897, *Layne & Bowler Corp.* v. *Western Well Works*, 261 U.S. 387, 67 L.Ed. 712. A few brief paragraphs will show the conflict petitioner claims, far from being real and embarrassing, is actually only fanciful and non-existent.

Petitioner relies upon the case of *Willson* v. *Superior Oil Company*, 274 S.W. 2d 947 (Tex. Civ. App. 1955, error ref'd., n.r.e.)[4] in which the lessee of an undivided interest of the minerals claimed he was entitled to credit for the drilling undertaken by another lessee owning another un-

[4] It should be observed that the *Willson* case was decided by an intermediate appellate court. The Supreme Court of Texas refused a writ of error, "no reversible error." This action by the Supreme Court shows that it "*is not satisfied the Court of Civil Appeals in all respects has correctly declared the law*, but is of the opinion that the application presents no error which requires reversal." Texas Rules of Civil Procedure, Rule 483, which is set out in full as Appendix C.

divided interest in the same minerals. There was an operating agreement between them under which the first lessee — whether the well produced oil or gas or was non-productive — agreed to pay his portion of the drilling expenses. Three fundamental distinctions between that case and this one immediately appear: (1) In the *Willson* case (but not in this one) there was an agreement to share the drilling expenses; (2) There had been no separation between operations for different minerals; and (3) The first lessee was claiming the benefit of the drilling operations so as to extend the lease. These basic distinctions (and others, such as the difference in lease provisions) conclusively refute the existence of any conflict.

Additionally, petitioner claims the decision in this case is contrary to two decisions previously determined by the same Court of Appeals that decided this case. In the case of *Mattison* v. *Trotti*, 262 F. 2d 339, Judge Hutcheson (who also sat in this case), speaking for a unanimous court, held that one oil and gas lessee of an undivided interest *was not entitled to credit* for the drilling done by another oil and gas lessee of other undivided interests where the first lessee "did not pay, agree to pay, or in any way contribute to the cost of the well," and where the well "was not induced or procured" by him. Not only is the factual situation in that case entirely foreign to the case at bar, but in addition, the legal questions are entirely dissimilar. In the *Trotti* case there had been no separation between operations for different minerals. In this case, respondent did not induce or procure the drilling of the wells. (R. 359, 361) Moreover, respondent is not seeking credit for anything that Freeport did. Petitioner, without any basis whatever, is seeking to charge respondent with drilling for oil because Freeport drilled for sulphur, and under the holding of the very case petitioner cites — the *Trotti* case — this cannot be done.

The only other case from Texas cited by petitioner, *Sinclair Oil & Gas Co.* v. *Masterson*, 271 F. 2d 310, also supports the respondent's position and the decision of the lower courts. In that case, oil operations had been separated from gas operations and different firms owned the right to develop the premises for these two respective minerals. The court held both as a matter of fact and as a matter of law that drilling for gas by the gas operator did not constitute drilling for oil by the oil operator and refused to credit one lessee with the operations of the other. This is the only case cited by either party where there had been a separation of mineral estates, and significantly, the court held that drilling for one mineral did not constitute drilling for another. This Court denied certiorari in 363 U.S. 952, 4 L. Ed. 2d 870.

Fully supporting and buttressing respondent's contention that no conflict exists is the simple fact that the majority opinion, as petitioner puts it, fails "to mention, to discuss, to distinguish, to attempt to distinguish or even to discuss" the authorities relied upon herein by petitioner. (Petition, p. 2) Each of these cases was cited by petitioner and brought to the Court's attention on original submission and in petitions for rehearing. If a conflict exists in fact, it must be assumed that the Court of Appeals would have dealt with these decisions.

What is still more significant is that even the writer of the minority opinion, by the absence of the citation of any cases whatsoever, saw no conflict in the decision of the Court of Appeals between this case and the other decisions referred to by petitioner.

The issues as presented in both the majority and minority opinions turn on the sufficiency of the evidence and upon the construction to be given the 1942 lease amendment. Since writs of certiorari will not be granted "merely to

review the evidence or inferences drawn from it", *Fields v. United States*, 205 U.S. 292, 51 L. Ed. 807, and since this Court does not interfere where the determinations turn "on evaluation of testimony" *N.L.R.B. v. Pittsburgh S.S. Co.*, supra, the issues in this case cannot conceivably place this petition within the scope of Rule 19 as interpreted by this Honorable Court.

Accordingly, no basis for review has been shown.

II.

THE JUDGMENTS OF THE TRIAL COURT AND COURT OF APPEALS ARE CORRECT

The record shows that in the trial court, petitioner's case consisted primarily of "expert" proof designed mainly to establish that respondent had discovered oil in paying quantities, it being petitioner's position that failure to drill thereafter subjected the lease to forfeiture. This effort was aborted by admissions of petitioner's "experts" on cross-examination. The trial court found this issue against petitioner, and the Court of Appeals — all three Judges concurring — agreed with the finding of the trial court. Petitioner has abandoned this contention.

There remains only the contention that petitioner by availing itself of geological and geophysical data and information had engaged in drilling for oil. This contention, as now asserted, is based on a strained and untenable construction of the lease amendment of January, 1942. It will be noted that petitioner now treats the drilling for oil provision of this amendment differently than it did in its complaint and in the trial court. On page 2 of the Petition for Certiorari, petitioner states: "The issue is whether the uncontroverted evidence established that respondent did begin 'prospecting operations' . . . with respect to 'oil.'" But in its complaint petitioner realized that this was not

the correct interpretation of the lease amendment, so petitioner very clearly charged, not once but twice, that the defendant began "*drilling* and *prospecting*" (Par. III of complaint, R. 19; Par. IV of complaint, R. 20). Moreover, the provision of the lease amendment invoked by petitioner as the ground for forfeiture places no obligation on respondent to conduct continuous drilling obligations until "after *drilling for oil* has been started" and this provision is expressly pleaded in the complaint. (R. 19) We submit that petitioner's construction of the lease amendment in its complaint is correct and that its after-thought construction is wrong.

The trial court and the Court of Appeals correctly interpreted the lease amendment in question. It is a cardinal rule of construction that a contract must be read and interpreted in its entirety — from its four corners — and when the amendment of January 1, 1942 (Plf. Ex. 2, R. 515-525), is read in its entirety, it becomes abundantly clear that the parties use the term "drilling for oil" in the sense of The Texas Company, the owner of the oil and gas rights, *drilling a hole by putting a suitable drilling rig to work for the purpose of making out of it an oil well.* The contract speaks of "exploration thereon by *drilling* additional test wells" and "at any time after *drilling* for oil has been started" — all in the sense of *drilling a hole* — a well. It speaks of drilling by means of a "suitable drilling rig" to *certain depths* — all clearly indicating that *drilling wells*, as that term is used in the normal and ordinary sense, was intended. It is clear therefore that under a proper construction of the lease amendment it was necessary for respondent to do some drilling of a hole for its activities to constitute a drilling for oil and that mere geophysical or geological work done in a hole drilled by Freeport for sulphur production would not suffice.

To conclude that respondent was "drilling for oil" within the terms of the lease in question would require that the uncontroverted proof that Freeport did all of the drilling of the hole of each of these nine wells as sulphur wells be thrown out and there be read into the record that respondent set up a suitable drilling rig, spudded in and continued to drill each hole to its abandoned depth, not for sulphur but for oil. Yet this, in its naked form, actually is the contention the petitioner is making.

The petition abounds with references to various geophysical and geological activities on the part of respondent, which petitioner urges should be considered as a prospecting and drilling for oil. But this is contrary to the testimony of petitioner's President, W. T. Doherty, and petitioner's Senior Vice President, Robert Grosjean, and petitioner's expert witness Maynard H. Steig.

Petitioner's President Doherty repeatedly referred to the activities of respondent as having been of a *geophysical* nature. He referred to Well 983 — the seismic well — as a "*geophysical* some kind of a *survey* in that deep well." (R. 37) That petitioner's President Doherty knew that The Texas Company had been gathering information of a geophysical and geological nature is made ever so clear by his testimony of his efforts to obtain this information from respondent's geologists. (R. 43, 44) It was petitioner's President Doherty who solemnly stated that an experienced and prudent operator "before he starts a location for *any* wells assembles all of the geophysical and geological information he can get" — and "all he can get is never too much" (R. 47), and then continued to explain that one of the things that such an operator does *before he makes a location* for any well is to determine the general structure of the dome (of the type present at Hoskins Mound) and that to gather

such information "a prudent operator would usually resort to subsurface information from *drilling operations and also from geophysical* information." (R. 47, 48) Then Mr. Doherty plants himself squarely in agreement with respondent's position by testifying that electric logs and side wall cores of old wells constitute valuable information as an aid to determining *where to locate a well* that is later to be drilled for oil. (R. 48)

Mr. Doherty further testified that he discussed with respondent's representatives "the matter of getting geophysical information and geological information" from them. (R. 54) So again, Mr. Doherty is recognizing these activities in their true relationship.

The entire testimony of Mr. Doherty as given on oral deposition — read, corrected and signed by him — was introduced in evidence at the trial. Mr. Doherty chose not to take the witness stand.

This testimony was not inadvertent by any means. Robert Grosjean, the Senior Vice President of petitioner company, testified that a prudent oil operator does not go to an area in which he holds a lease and drill a well *without first having obtained geophysical and geological information.* Moreover, testified Mr. Grosjean, ". . . it is customary and ordinary and usual in the oil business to obtain all of the geophysical and geological information you possibly can gather *before you resort to any drilling operations . . .*" (R. 212, 218) Grosjean confirmed that all such information an operator can get is "never too much." (R. 214)

Petitioner's Senior Vice President Grosjean frankly admitted that Well 983 was nothing more than a "*geophysical* undertaking for the purpose of determining the configuration of the dome." (R. 224) Moreover, counsel for

petitioner judicially admitted, in answer to the trial court's question, that the drilling of this well standing alone, *would not constitute drilling for oil within the terms of the lease*. (R. 122)

There are further instances of admissions by petitioner's executives that the nine flank wells were not drilled for oil but for sulphur and that respondent's assembling of data from these wells so drilled by Freeport *were purely for geological purposes*. For instance, this was made abundantly clear by this further admission of petitioner's Senior Vice President Grosjean on cross-examination:

"Q. A prudent operator **looking for oil** would have drilled through that overhang, wouldn't he?

"A. Perhaps he would have, and perhaps there is such an intention of an oil company at some date to do so.

"Q. It would have been foolish of him had he been drilling for oil to stop **and not go through the overhang** to get through to the oil?

"A. If he had in mind producing it at that moment, I would say you are correct. I don't know the type of rig available to these wells. Maybe it was not capable of going to that depth.

"Q. **If a man drills for oil and looks for oil and knows it is apt to be found against the flanks of the dome in the overhang, he is going to drill through the overhang?**

"A. **In general terms that's correct.**

"Q. **All right. Actually this only went to the cap rock, didn't it, 1017?**

"A. **I believe that's right.**

"Q. **Didn't even get to the salt, didn't even drill through the overhang or into it?**

"A. **I don't believe it did, but I believe the sulphur company was operating at the time it went into the cap rock itself, and were exploring reportedly for sulphur at that moment.**

"Q. That's right — we agree with that. **Now where do you find your sulphur deposits?**

"A. **You find them in association with the cap rock, around it.**

"Q. **Just the way these wells were drilled, is that right, sir?**

"A. **That is correct.**" (R. 227, 228)

Mr. Grosjean further admitted that without electric logs and side wall cores, a contour map could not have been prepared, and he also admitted that such a contour map is important to an operator who might *later* decide "to develop a lease for oil or gas." (R. 243, 244).

Petitioner's expert Steig on cross-examination was given an opportunity to pass upon and characterize the very activities engaged in by respondent in connection with the seismic well and the flank wells. He was asked to describe the steps that he would take *before drilling for oil* if he were the lessee in an oil, gas and mineral lease — "As a prudent operator, what steps would you take before you started drilling on that lease?" (R. 341) He admitted that he would have a *refraction survey* made in the case of a salt dome, which, as the Court pointed out in its opinion, is admittedly the structure present at Hoskins Mound. Now let us bear in mind that these steps described by the witness Steig are all taken before there is to be any drilling for oil. After admitting that he would have a refraction survey made — *precisely what respondent did in Well 983* — he described this step as the work of a geophysicist and

further described it as a seismic survey. He was then asked the following:

> "Q. All right, sir. Now suppose on that same lease, on that same dome, now after the running of a refraction survey a sulphur operator was also drilling some sulphur wells, and suppose that the operator, the party operating the sulphur wells, permitted you to run electric logs on that well and take side wall cores in those wells, would you do it as a prudent operator, **would you as a prudent operator, gather that information?**
>
> "A. It would be a means of getting that information, yes, sir." (R. 343)

Then he was asked this further question:

> "Q. All I'm going to ask is as a prudent operator you would avail yourself of that information in those sulphur wells, if the sulphur operator permitted you to do it **prior to the time you drilled for oil?**
>
> "A. All right, sir; yes, sir." (R. 343)

Thus, petitioner's own witnesses have admitted they would — *prior* to drilling for oil — take precisely the same steps that petitioner now urges constitute drilling for oil.

Conclusion

Inherent in this forfeiture suit is the strange spectacle of a lessor receiving payments *averaging more than $15,000.00 per month for more than thirty years*, by which the lessee *purchased* the right to explore thoroughly the lease for oil and gas and *purchased* the right to defer drilling for oil until 1986, (according to the lessor's own admissions) — only to find the lessor retain the approximately $11,500,000.00 it so received, yet seek to destroy the lessee's estate by a baseless attempt to accelerate the drilling requirements.

No basis for review exists. Moreover, two Courts which carefully examined the evidence found no merit in petitioner's contentions. It is submitted that their judgments are right and that the writ sought should be denied.

Respectfully submitted,

LEON JAWORSKI
Bank of the Southwest Building
Houston 2, Texas

Of Counsel:

W. S. CLARKE
Texaco, Inc.
Houston 2, Texas

M. W. PARSE, JR.
Bank of the Southwest Building
Houston 2, Texas

FULBRIGHT, CROOKER, FREEMAN,
BATES & JAWORSKI
Bank of the Southwest Building
Houston 2, Texas

Certificate of Service

I hereby certify that copies of the foregoing Reply to Petition for Certiorari were served upon counsel for petitioner on this day of July, 1962, by depositing the same in the United States Post Office or a mail box, with first class postage prepaid, addressed to counsel at his post office address.

.....

Leon Jaworski

APPENDIX A

(Agreement for Geophysical Information Between Freeport and Texaco)

FREEPORT SULPHUR COMPANY
Freeport, Texas

August 30, 1949

Mr. W. C. Kneale
Division Manager — The Texas Company
National Standard Building
Houston, Texas

Dear Mr. Kneale:

Freeport Sulphur Company (hereinafter called "Freeport") is now drilling with its own rig and equipment, its well No. 983 at Hoskins Mound, in Brazoria County, Texas, to a depth of 3500 feet, to and in the salt for the purpose of conducting geophysical work for the benefit of its sulphur producing operations at Hoskins Mound. In connection therewith, Freeport has entered into a contract with McCollum Exploration Company, of Houston, Texas, to conduct a geophysical survey after such well shall have been so drilled to the depth aforesaid, such contract being dated July 8, 1949, and under which Freeport is obligated to pay, among other costs, the sum of $10,000.00 to McCollum Exploration Company, reference being here made to such contract.

The Texas Company (hereinafter called "Texas") is desirous of securing all the information obtained by reason of the drilling of the aforesaid well and the aforesaid geophysical survey, and in addition, Texas desires to have the aforesaid well drilled to a total depth of 7500 feet so that additional geophysical work in connection with such well can be conducted, Texas being desirous of obtaining all such

information in connection with the possibility of conducting prospecting for oil and gas at Hoskins Mound.

Therefore, Freeport agrees to make available to Texas, and to share with Texas, all the geophysical information obtained in drilling the aforesaid well to 3500 feet and from the survey to be performed by McCollum Exploration Company under the aforesaid contract; and in addition, Freeport shall attempt to drill the aforesaid well to a total depth of 7500 feet using the aforesaid rig and equipment, all on the following basis:

(a) Texas shall pay to Freeport, at Freeport, Texas, within thirty (30) days after the aforesaid well shall have been drilled to such depth of 3500 feet and such surveys shall have been performed under the aforesaid contract, one-half of the costs of drilling such well to 3500 feet, including, but not by way of limitation, the cost of all labor, material and other expenses incurred in the drilling of such well, plus, as labor overhead, 10% of the cost of such labor, and, as material overhead, 10% of the cost of such material, and, as supervision and administrative overhead, 10% of the total cost of labor, material, other costs, and labor overhead and material overhead; and in addition, Texas shall pay to Freeport one-half of the aforesaid sum of $10,000,00 to be paid by Freeport to McCollum Exploration Company, and one-half of such other costs which Freeport may incur under such contract.

(b) In addition, Texas shall also pay to Freeport, at Freeport, Texas, within thirty (30) days after being billed therefor, the entire cost of drilling the aforesaid well below 3500 feet and down to the total depth thereof, including, but not by way of limitation, the cost of all labor, material and other expenses, plus, as labor overhead, 10% of the cost of such labor, and as material overhead, 10% of the cost of such material, and as supervision and administrative

overhead, 10% of the total cost of such labor, material, other expenses and labor overhead and material overhead. In addition, Texas shall pay, at the time and place as aforesaid, the sum of $50.00 per day for rental of the drilling rig and equipment used on such well, the time of such charge to begin at the time Freeport shall be ready to commence the drilling of such well below 3500 feet and down to the total depth thereof, and to continue until the drilling of such well shall have been discontinued. Texas shall furnish, at its own expense, any and all additional equipment necessary to equip and make such drilling rig safe and satisfactory for drilling to the aforesaid depth of 7500 feet. In the event it becomes necessary that Texas furnish, among other things, draw works for such rig, then, the aforesaid rig rental, beginning at the time such draw works shall have been so furnished, shall be reduced from $50.00 per day to $25.00 per day.

(c) While the projected depth of the aforesaid well shall be 7500 feet, there shall be no obligation on the part of Freeport to drill such well to such depth or any other depth, it being agreed that Freeport shall have the right to discontinue the drilling of such well at any time it may desire without any further obligation to Texas therefor or in connection therewith, but Texas shall, in the event such well shall not be drilled to such depth of 7500 feet, reimburse Freeport as aforesaid for the depth to which such well shall have been so drilled. After such well shall have been drilled to such depth of 3500 feet, Texas may at any time direct Freeport to discontinue the drilling of such well. In such event, Texas shall reimburse Freeport as aforesaid for the depth to which such well shall have been so drilled.

(b) The Texas Company shall, at its own expense, have performed such geophysical work in connection with such well, below the aforesaid depth of 3500 feet, as it may

desire. Texas shall also reimburse Freeport as aforesaid for any services which may be performed by Freeport, at the request of Texas, in connection with such work below such depth of 3500 feet.

Nothing herein contained shall have the effect of amending, altering, modifying or in any manner changing that certain contract between The Texas Company, Freeport Sulphur Company and Freeport Texas Company, dated March 14, 1922, pertaining to Hoskins Mound, or any supplemental contracts or agreements with respect to Hoskins Mound heretofore executed between such companies, or any of them, or their successors or assignees, reference being here made to all such contracts and agreements.

If the above is in accordance with your understanding, please so indicate by signing the extra copy of this letter herewith enclosed, as indicated below, and returning such copy to us.

Very truly yours,

FREEPORT SULPHUR COMPANY,
By G. C. McMILLEN.

Accepted this 6th day of September, 1949.

THE TEXAS COMPANY,
By WM. C. KNEALE.

Form Approved:

R. O. SMITH

APPENDIX B

(Agreement for Geological Information Between Freeport and Texaco)

Houston, Texas
April 18, 1950

Electrical Logging, Freeport Sulphur Company Wells, Hoskins Mound, Brazoria County, Texas.

Freeport Sulphur Company
Freeport, Texas

Gentlemen:

Referring to discussions between representatives of our respective companies looking toward an arrangement whereby The Texas Company might acquire information from electrically logging and sidewall coring certain sulphur exploratory wells which you contemplate drilling on the flanks of the Hoskins Mound Dome, above county:

This will confirm the understanding of the agreement which crystallized from the above mentioned discussions (and which shall henceforth be considered the entire agreement of the parties relative to above matter) as follows:

(1) The Texas Company will reimburse Freeport Sulphur Company for delay rig time including that waiting on service company (Halliburton or Schlumberger), running of log, sidewall coring, and if necessary reconditioning of hole due to operations conducted for its benefit, at the rate of $17.00 per hour.

(2) The Texas Company shall pay for any damage to, or loss of, hole as a result of operations conducted for its benefit and shall also indemnify you against any other loss or expenses which may be suffered or sustained as a result of any operations so conducted for its benefit.

(3) We hereby agree to hold you harmless for all damages or expenditures, irrespective of character, which might directly result from operations performed at our request."

It is our understanding that approximately nine of the wells shown in red circle on the attached plat, marked Exhibit "A," will probably be drilled at the approximate locations shown and that you may drill the remainder of the wells shown on such plat at the approximate locations shown, and that you will notify the writer, or such other person as he may designate, by telephone 24 hours prior to the time it will be in order to commence work to be performed for our account.

This understanding may be canceled by either party at any time.

In the event the foregoing expresses your understanding of the agreement relative to the above mentioned exploratory program, kindly so indicate by signing the enclosed copy of this letter in evidence of such fact and returning the same to us at your early convenience.

Yours very truly,

THE TEXAS COMPANY,
Producing Department,
By WM. C. KNEALE,
(Wm. C. Kneale),
R. O. SMITH.

The terms and conditions hereinabove outlined conform to our understanding of the agreement relative to the subject matter hereof and are, in all things, acceptable to us.

FREEPORT SULPHUR COMPANY,
By G. C. MCMILLEN.

(Date) Apr. 25, 1950.

APPENDIX C

Texas Rules of Civil Procedure, Rule 483. Order on Application for Writ of Error

In all cases where the judgment of the Court of Civil Appeals is a correct one and where the principles of law declared in the opinion of the court are correctly determined, the Supreme Court will refuse the application with the docket notation "Refused". In all cases where the Supreme Court is not satisfied that the opinion of the Court of Civil Appeals in all respects has correctly declared the law, but is of the opinion that the application presents no error which requires reversal, the Court will deny the application, with the notation "Refused. No Reversible Error." In all cases where the Supreme Court is without jurisdiction of the case as presented in the application it will dismiss the application with the docket notation, "Dismissed for want of jurisdiction."

In cases of conflict named in subdivision 2 of Art. 1728 of the Revised Civil Statutes of Texas, as amended, the Supreme Court shall grant the application for writ of error, unless it be in agreement with the decision of the Court of Civil Appeals, in the case wherein the application is filed, in which event said Supreme Court shall so state in its order, with such explanatory remarks as may be deemed appropriate. In cases where the decision of the Court of Civil Appeals is in conflict with a previous opinion of the Supreme Court, the Supreme Court may, in its discretion, without the necessity of granting the writ and hearing the case, reverse the same on the application for writ of error, making, at the same time, such further orders as may be appropriate.